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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1970

No. 6891

ARNOLD FAIRBANK, an individual d/b/a ARNOLD FAIRBANK CATTLE COMPANY, and ARNOLD FAIRBANK CATTLE CO., INC., a California corporation,
*Petitioners,*

v.

CLIFFORD M. HARDIN, Secretary, United States Department of Agriculture and UNITED STATES OF AMERICA, *Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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The petitioners pray that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above case on May 8, 1970. A petition for rehearing was timely filed on June 1, 1970, and denied on June 17, 1970.

## OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is not reported.

## JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was made and entered on May 8, 1970, and a copy thereof is appended to this petition in the appendix at p. 1a. The jurisdiction of this Court is invoked under 28 U.S.C. sec. 1254 par(1).

## THE QUESTIONS PRESENTED

1. The finding and conclusion that Fairbank violated the Act was based upon the testimony of government employees, Watkins and Sherman. The testimony was based solely upon their review and evaluation of the entire contents of an investigative report containing a substantial amount of information purporting to be factual gathered from third persons which information was not within the personal knowledge of such witnesses. Upon the receipt of such testimony, was the refusal to produce the entire investigative report at Fairbank's request for purposes of cross-examination of such witnesses a denial of due process?

2. Was there a denial of due process where government witnesses admitted, after the record was closed, they had testified falsely, and with knowledge of the perjury, the government took no steps to correct the record, and the false testimony was offered and received over objection to support a finding that the cattle shipped by Fairbank from Texarkana were the identical cattle received by the buyers of such cattle in California and Arizona as itemized in the complaint, which finding was essential to support the

decision that Fairbank violated section 312(a) of the Packers and Stockyards Act as charged in the complaint?

3. Was there substantial evidence to support the decision and order of the Judicial Officer that Fairbank sold cattle on false weights in California and Arizona?

4. Was Fairbank entitled to be heard upon the validity and the application of regulations under the Act which the government applied to his transactions at country points which were not posted stockyards in view of the fact that the regulations were promulgated following extended public hearings as to weighing practices at posted stockyards at a time before Congress extended the Act to country livestock transactions?

## CONSTITUTIONAL PROVISION, STATUTES AND REGULATIONS INVOLVED

This case involves:

1. The Fifth Amendment to the Constitution of the United States which provides in part as follows:

> "No person shall . . . be deprived of life, liberty, or property, without due process of law;"

2. Section 312 (a) of the Packers and Stockyards Act (42 Stat. 167, 7 U.S.C. sec. 213 (a)), which until its amendment on September 2, 1958, provided as follows:

> "(a) It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with receiving, marketing, buying or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing or handling, in commerce at a stockyard, of live stock."

3. Section 312 (a) of the Packers and Stockyards Act, as amended by the Act of September 2, 1958, Pub. L. 85-909, sec. 2(5), (72 Stat. 1750, 7 U.S.C., sec. 213 (a)), which provides as follows:

> "(a) It shall be unlawful for any stockyard owner, market agency, or dealer to engage in or use any unfair, unjustly discriminatory, or deceptive practice or device in connection with receiving, marketing, buying or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing or handling, in commerce, of live stock."

4. 5 U.S.C., sections 555 (d) and 555 (e) (80 Stat. 385), which provide as follows:

> "(d) Agency subpenas authorized by law shall be issued to a party on request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought. On contest, the court shall sustain the subpena or similar process or demand to the extent that it is found to be in accordance with law. In a proceeding for enforcement, the court shall issue an order requiring the appearance of the witness or the production of the evidence or data within a reasonable time under penalty of punishment for contempt in case of contumacious failure to comply.
>
> "(e) Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceedings. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial. (Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 385.)"

5. Sections 201.46, 201.49, and 201.55 of the Regulations under the Packers and Stockyards Act (9 CFR, sec. 201.46, 201.49, and 201.55), which appear in the appendix at pp. 9a-11a.

6. Subsections (a) and (b) of section 202.13 of the Rules of Practice governing proceedings under the Packers and Stockyards Act (9 CFR, sec. 202.13 (a) and 202.13 (b)) which provide as follows:

> "(a) *Issuance of subpenas.* The attendance of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding may, by subpena, be required at any designated place of hearing. Subpenas may be issued by the Secretary or by the examiner, under the facsimile signature of the Secretary, upon a reasonable showing by the applicant of the grounds, necessity, and reasonable scope thereof.
>
> "(b) *Application for subpena duces tecum.* Subpenas for the production of documentary evidence, unless issued by the examiner upon his own motion, shall be issued only upon a verified written application. Such application shall specify, as exactly as possible, the documents desired and shall show their competency, relevancy, and materiality and the necessity for their production."

## STATEMENT

Arnold Fairbank, d b a Arnold Fairbank Cattle Company, and the Arnold Fairbank Cattle Co., Inc., a corporation which succeeded to Fairbank's business, hereinafter referred to as Fairbank, filed a petition in the United States Court of Appeals for the Ninth Circuit to obtain a review of the decision of the Judicial Officer in the United States Department of Agriculture. The decision was issued under the Pack-

ers and Stockyards Act (7 U.S.C. sec. 181 *et seq.*). Fairbank at all times herein was a registered "dealer" under the Act engaged in the business of buying and selling cattle in commerce.

The administrative proceeding in the Department of Agriculture was initiated by a complaint filed on April 28, 1966 by the Director of the Packers and Stockyards Division, Consumer and Marketing Service (presently the Packers and Stockyards Administration), hereinafter referred to as the government, following an audit and investigation of Fairbank's operations as a country livestock dealer in 1965. The complaint itemized 54 transactions and alleged that in each transaction Fairbank purchased a stated number of cattle in Texas at a stated weight and sold and delivered the identical cattle to buyers in California and Arizona at an arbitrarily increased weight and that in so doing Fairbank willfully violated 7 U.S.C. sections 213 (a) and 221 and Regulations 9 CFR sections 201.46, 201.49, and 201.55.

Fairbank filed a petition with the Secretary of Agriculture (set forth in appendix pp. 11a-14a) requesting the amendment, repeal or revision of sections 201.46, 201.49 and 201.55 (9 CFR 201.46, 201.49 and 201.55) of the regulations under the Act to adapt said regulations to country transactions. The petition was denied by letter (set forth in appendix pp. 14a-15a).

Prior to the hearing, Fairbank filed a preliminary motion (set forth in appendix pp. 16a-18a) to inspect and copy evidentiary and impeachment material in the hands of the government including the entire investigative report prepared by the government investigators of Fairbank's operations. This motion was

denied, whereupon Fairbank filed an affidavit with the Hearing Examiner and moved for the issuance of a subpoena duces tecum for the production of such evidentiary and impeachment material which was denied. TR 463, 466, Respondent's Exhibit 3 for Identification.

Fairbank also filed a motion for a declaratory order (set forth in appendix pp. 18a-19a) to declare sections 201.46, 201.49 and 201.55 of the said regulations illegal and void as to country livestock transactions. This motion was denied. Fairbank filed his answer on September 8, 1966 denying that he had willfully violated the Act.

Hearings were held in El Centro, California, November 29 through December 2, 1966, and June 28 and June 29, 1967 before Jack W. Bain, Hearing Examiner, United States Department of Agriculture.

The government called as its witnesses, its employees, Watkins, Williams, Cortez and Sherman; also buyers of Fairbank's cattle in the transactions complained of, Wilkinson, Abbott, Reyes, Delfino, Williams, Stone, Jack Hannon, Skoog, Stafford Hannon and Torrence; operators of rest stops where Fairbank's cattle were unloaded for feed, water and rest during transit, Manning, Headstream, Ruebush, and Parsley. Fairbank called on his behalf K. J. Smith, Jr. in charge of all of his trucking, Rentel, Smith's principal driver, and his bookkeeper Hudson. On June 28 and 29, 1967, at a second stage of the hearing, over the objection of Fairbank, truckers Paris, Icke, Taylor, Dagley and Lammer were called as witnesses for the government.

Government employees Watkins and Sherman testified they had access to the entire investigative report

and it was their opinion, based upon the investigative report, that Fairbank had violated the Act as charged in the complaint. Tr 38, 50, 124, 150, 179-182, 228, 877-884. The Hearing Examiner received such testimony in evidence over objections but refused to require the production of that report for cross-examination of government witnesses. Tr 16-18, 173, 187, 207-208, 292, 294, 877, 880, 888, 1043-1047.

All the buyers called by the government testified they always weighed the cattle off-truck at their feed yards, and subsequently compared the off-truck weight with Fairbank's invoice weight, and based on their own rule that the "shrink" (the difference between the invoice weight and the off-truck weight) could not exceed 10% of the invoice weight, either accepted the cattle, requested adjustments in weight or price, or rejected the cattle, and no payments were made until all elements, including weight, fully met their approval. Tr 330-341, 362-365, 391-393, 399, 405, 410-414, 417, 418, 424, 434-444, 509-511, 545-556, 587, 588, 590, 600, 603.

The rest stop operators testified that Fairbank's cattle were carefully fed and watered at the rest stops and that the cattle would gain in weight with such feed and care, that Fairbank kept replacement cattle at the rest stops on feed and water and that Fairbank and his representatives could and did sort and exchange cattle at the rest stops, Tr 461, 516-526, 532, and their testimony was fully corroborated by testimony from Fairbank's witnesses, Smith and Rentel. Tr 650-665, 727-817.

Hudson testified he was experienced in cattle transactions and it was impossible for Watkins to correlate the purchase transactions with the re-sale transac-

tions because cattle were exchanged or added to shape up the loads to meet the buyer's approval. Tr 689-725.

Smith and Rentel testified that Fairbank's buyers were well pleased with their purchases, that Fairbank did not represent to the buyers he was selling them cattle based on his purchase weights, and that there was nothing unfair or deceptive and no one was dissatisfied with the transactions. Tr 650-665, 727-817. They also testified that at various stopping points during the transit of the cattle between Texarkana and the ultimate destinations in California and Arizona Fairbank maintained facilities whereby the individual cattle in particular loads in transit could be and in fact were from time to time sorted and changed with a view to better satisfying the buyer's desire.

The government stated that it was surprised by this testimony and called five truckers who testified, Tr 916-1200, they had driven the trucks transporting some of the loads itemized in the complaint and identified certain logs.

Immediately following the close of the hearing, the five truckers called as witnesses for the government joined Fairbank, his counsel and K. J. Smith, Jr., the principal trucker for Fairbank, for lunch. At that luncheon, one of the witnesses, Dagley, stated that he testified falsely regarding the shipments in that on certain transactions where his name was on the driver's log he was not on the trip, and that his testimony relating to the logs and the loading of the cattle was false. The other truck drivers stated generally they also had given similar false testimony concerning shipments of Fairbank's cattle itemized in the complaint and the logs thereof. Upon returning to the Washington, D. C., area, counsel for Fairbank immediately

notified Raymond Fullerton, government counsel, of the perjured testimony who stated he would take steps to correct the record.

Following the hearing, Fairbank filed proposed findings of facts conclusions and order, and objections to the unfair and prejudicial actions of the Hearing Examiner.

At the time of the oral argument before the Judicial Officer the government had taken no steps to correct the record and Fairbank's counsel relayed the facts as to the perjury to the Judicial Officer (Oral Argument pp. 9, 24, 27, 28, 30) who expressed shock and concern but who took no steps to correct the record, and issued his decision and order, based upon the record which contained the perjured testimony of the truckers.

The Judicial Officer on November 1, 1968, found that Fairbank engaged in practices in violation of sections 312 (a) and 401 of the Act (7 U.S.C. secs. 213 (a) and 221) and secs. 201.46 and 201.55 of the regulations (9 CFR secs. 201.46 and 201.55), and issued an order requiring Fairbank to cease and desist from the practices alleged, directing Fairbank to keep records, and suspending Fairbank's registration under the Act for a period of six months. (Set forth in Appendix, pp. 20a-37a.)

Fairbank in connection with the appeal to the Court of Appeals filed a motion (set forth in appendix pp. 38a-41a) pursuant to the provisions of 28 U.S.C. section 2347(c) (as added by Pub.L. 89-554, sec. 4(e), 80 Stat. 623) for leave to adduce additional evidence arising out of the failure of the government to produce the investigative report of Fairbank's operations, to

determine the application of the weighing regulations under the Packers and Stockyards Act to country transactions, and to purge the record of perjury. Said motion was denied by the Court. Prior to argument before the Court, Fairbank filed a motion to produce documents under seal (set forth in appendix pp. 42a-43a) so that all documents requested by Fairbank but which the government refused to produce would be available to the Court for review. The government opposed said motion and Fairbank filed a reply thereto (as set forth in appendix pp. 44a-56a). The Court failed to rule on said motion, and the documents requested were not produced under seal.

The Court of Appeals for the Ninth Circuit, on May 8, 1970, affirmed the administrative order. A timely petition for rehearing was filed by Fairbank on June 1, 1970, and was denied by the Court on June 17, 1970.

## REASONS FOR GRANTING THE WRIT

### I. The Refusal To Produce the Entire Investigative Report at Fairbank's Request for the Purpose of Cross-Examination of the Government Employees Watkins and Sherman Was a Denial of Due Process

The action taken by the Judicial Officer in this proceeding has seriously injured Fairbank in that it has prevented him from practicing his chosen profession of cattle dealer for a period of six months upon the basis of an erroneous finding and conclusion that he violated the Packers and Stockyards Act. The finding and conclusion that Fairbank violated the Act was based upon the testimony of the government employees, Watkins and Sherman. The testimony of these witnesses was based solely upon their review and evaluation of the entire contents of an investiga-

tive report containing a substantial amount of information purporting to be factual, gathered from third persons, which information was not within the personal knowledge of such witnesses. Upon the receipt of such testimony, the refusal to produce the entire investigative report at Fairbank's request for purposes of cross-examination was a denial of due process. *Bowman Dairy Co.* v. *United States*, 341 U.S. 214 (1951), *Greene* v. *McElroy*, 360 U.S. 474 (1959), *Campbell* v. *United States*, 365 U.S. 85 (1961).

The flat and arbitrary denial of Fairbank's request for the issuance of subpoena duces tecum to produce the entire investigative report resulted in the suppression of evidence or impeachment material by the government which was completely unjustified and in violation of the fair hearing provisions of the Administrative Procedure Act as well as the Rules of Practice under the Packers and Stockyards Act. Section 202.13 of the Department of Agriculture's Rules of Practice (set forth above at p. 5) under the Packers and Stockyards Act provides for "the production of documentary evidence from any place in the United States on behalf of any party to the proceeding", and section 555(d) of Title 5 of the United States Code (set forth above at p. 4) provides that subpoenas "shall be issued to a party upon request and, when required by rules of procedure, on a statement or showing of general relevance and reasonable scope of the evidence sought."

Fairbank diligently sought the production of the evidentiary and impeachment material in the possession of government officials. On all occasions Fairbank's requests were rejected by the Hearing Examiner. This was a gross denial of due process and

a flagrant disregard of the fair hearing requirements established by this Court under Packers and Stockyards Act in the second *Morgan* case. In that case, *Morgan* v. *United States*, 304 U.S. 1, at pp. 14, 15, and 22 (1938), this Court said:

> ". . . in administrative proceedings of a quasi-judicial character the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play. . . The maintenance of proper standards on the part of administrative agencies in the performance of their quasi-judicial functions is of the highest importance . . . they must accredit themselves by acting in accordance with the cherished judicial tradition embodying the basic concepts of fair play."

Fairbank was entitled to inspect all investigative reports available to government witnesses Watkins and Sherman touching the events and activities as to which Watkins and Sherman testified at the hearing. *Jencks* v. *U. S.*, 353 U.S. 657, 668 (1957).

The statement in the decision of the Court of Appeals "that petitioners were given every producable (sic) statement, record and document in the possession of the administrative agency, with the exception of certain portions excised by the Hearing Examiner while viewing the material *in camera*" is completely contrary to the fact and without any foundation whatsoever in the record. See Fairbank's Motion to Produce Documents under Seal, set forth in Appendix, pp. 42a-43a; and Fairbank's Reply to the government's opposition to said motion, set forth in Appendix, pp. 44a-56a.

## II. The Failure of the Government To Correct the Record Where Its Own Witnesses Testified Falsely Was a Denial of Due Process to Fairbank

There was a denial of due process where government witnesses admitted, after the record was closed, they had testified falsely, (see affidavits set forth in Appendix at pp. 57a-60a), and with knowledge of the perjury, the government took no steps to correct the record. The false testimony was offered to support a finding that the cattle shipped by Fairbank from Texarkana were the identical cattle received by the buyers of such cattle in California and Arizona as itemized in the complaint, which finding was essential to support the decision that Fairbank violated Section 312 (a) of the Packers and Stockyards Act as charged in the complaint.

Prior to the recommended decision of the Hearing Examiner, counsel for the government had knowledge of and was fully advised that four truckers called by the government admitted they testified falsely. Such truckers were called by the government to trace through the identical loads of cattle from Texarkana to California. The government alleged in the complaint that the identical cattle purchased in Texarkana were resold in California. The truckers testified they accompanied certain of the shipments of Fairbank's cattle, itemized in the complaint, from Texarkana to points of destination in California and Arizona and that the cattle delivered at such points of destination were the identical cattle which had been loaded in Texarkana. Tr. Paris 911-1018, Ickes 1019-1061, Dagley 1110-1169, Laumer 1170-1203. The finding of the Judicial Officer that Fairbank violated the Act was dependent upon the finding that the cattle loaded in Texarkana were the identical cattle delivered in California and Arizona.

Watkins' testimony correlating the cattle purchased with the cattle sold was based solely upon the head count being the same. Tr 81-87, 264. He had no knowledge of the actual movement of the cattle. Fairbank's witnesses, Rentel and Smith, testified the cattle were sorted enroute and the cattle delivered were not the identical cattle loaded at Texarkana. There was no substantial evidence in the record that the cattle were identical.

The government with full knowledge of such false testimony, which went to a most important issue, the identification of the cattle enroute in the questioned transactions, did not advise the Hearing Examiner of the perjured testimony, but when Fairbank's counsel called it to the attention of the Judicial Officer at the oral argument, government counsel admitted he had been informed of the perjury. Having been fully advised, counsel for the government had a public duty to correct a perjured record his witnesses had created. Also, the Judicial Officer of the Department of Agriculture had a duty to take the necessary steps to correct the record and to purge the record of perjury before rendering his decision and order. Both of the said government officials failed in their duty in this respect. This perjury constituted falsehood on a material point. Where a party speaks to a fact and it is a deliberate falsehood, courts of justice under such circumstances are bound, upon principles of law, morality and justice to apply the maxim "falsus in uno, falsus in omnibus". *The Santissima Trinidad and The St. Ander*, 7 Wheat. (20 U.S.) 283 at p. 339, 5 L ed 454 (1822). Fairbank and his counsel filed affidavits with the Court of Appeals and requested leave to adduce additional evidence and correct the perjured testimony.

(See Appendix pp. 38a-41a and 57a-60a.) This was denied by the Court of Appeals and the decision and order of the Judicial Officer which was affirmed by the Court of Appeals still is based upon perjured testimony. This is a denial of due process to Fairbank under the Fifth Amendment to the Constitution of the United States. *Communist Party* v. *Subversive Activities Con. Bd.*, 351 U.S. 115 (1956).

### III. There Was No Substantial Evidence To Support the Judicial Officer's Decision That Fairbank Violated Section 312 (a) of the Packers and Stockyards Act

There was no substantial evidence to support the decision and order of the Judicial Officer that Fairbank sold cattle on false weights in California and Arizona.

The Judicial Officer found that Fairbank contracted to sell the cattle on his purchase weight in Texarkana, that he sold the cattle in California at false and incorrect weights, and thereby deceived and defrauded his customers. The buyers who were called as government witnesses all testified to the contrary. All the buyers testified that the questioned transactions were purchases on approval, with guaranteed delivery and shrinkage not to exceed ten per cent (10%) of the invoice weight, that off-truck weight was the basis for their purchase, and that the invoice weight and amount was adjusted to their satisfaction if the shrink exceeded 10%. The buyers testified that the cattle in all transactions were weighed by them in California and Arizona on their scales, and the weights were recorded (Tr Wilkinson, 329-336; Abbott 364; Reyes 392; Delfino 405, 410; Williams 427-428; Stone 434-435; 440-444; Jack Hannon 509; Skoog 545-546). The buyers also testified that they relied on their off-truck weight

and compared it to Fairbank's invoice weight, and determined it was a reasonable weight prior to payment (Tr Wilkinson 330-331; Abbott 364; Reyes 392; Delfino 410; Stone 444; Jack Hannon 509-510; Skoog 545). The buyers further testified that if adjustments were required in the invoice weight, Fairbank approved the adjustment or there was no sale (Tr Wilkinson 341; Abbott 364; Reyes 392-393; Delfino 410, 417; Williams 427; Stone 435-439), and unless all factors, including the weight, were satisfactory to the buyer, the buyer did not accept the cattle (Tr Wilkinson 330, 336-337; Abbott 363, 364; Reyes 393; Delfino 411; Torrence 603). In sum, the buyers testified they did not pay for the cattle until the cattle were (a) received by the buyers, (b) inspected by the buyers, (c) weighed by the buyers, and (d) approved by the buyers. (Tr Wilkinson 330-332, 336-340; Abbott 362-365; Reyes 391-399; Delfino 409-411, 417-418; Stone 434-444; Skoog 545-550; Stafford Hannon 587-588, 590; Torrence 600-603). The buyers' testimony was corroborated by Fairbank's witnesses, Rentel and Smith (Tr 663-665, 751-753).

The finding of the Judicial Officer was based entirely upon the testimony of government employees. These witnesses had no personal knowledge of the transactions and their testimony was predicated on the following assumptions, none of which are supported by the evidence: (a) that Fairbank made false representations to and deceived the buyers with respect to the transactions; (b) that the cattle loaded in Texarkana were the identical cattle delivered in California and Arizona; and (c) that it was impossible for the cattle to gain in weight from the time they were bought by Fairbank to the time of their sale and delivery to Fairbank's buyers.

The Judicial Officer's finding as to false weights clearly departs from the accepted and usual course of a judicial proceeding in determining what is and what is not substantial evidence. Fairbank's transactions are labeled false weight transactions when in fact they are accepted, valid country livestock transactions and upon the undisputed facts do not violate the Packers and Stockyards Act or any other moral or unwritten rule or standard in the livestock industry. The decision in this administrative proceeding, stamped with approval by the Court of Appeals, is shocking and should not be condoned by this Court. Administrative Procedure Act, Legislative History, 79th Congress, 2d session, Senate Document 248 at p. 208.

**IV. The Failure To Hear Fairbank on the Validity of Sections 201.46, 201.49 and 201.55 of the Regulations Under the Packers and Stockyards Act With Respect to Country Transactions Was a Denial of Due Process**

Fairbank was entitled to be heard upon the validity and the application of regulations under the Act which the government attempted to apply to his transactions when the regulations were promulgated following extended public hearings as to weighing practices at posted stockyards before Congress extended the Act to country livestock transactions.

The Packers and Stockyards Act was amended in 1958 (72 Stat 1750) and jurisdiction extended for the first time beyond the greater terminal stockyards to country livestock transactions. The industry and officials in charge of the administration of the Act at that time fully recognized the need for public hearings to fully consider whether the livestock weighing practices in country transactions were in compliance with the Act and whether the provisions of sections 201.46,

201.49 and 201.55 of the regulations should be extended to country transactions. Affidavit of Lee D. Sinclair (set forth in Appendix pp. 60a-63a). Officials in charge of the administration of the Packers and Stockyards Act took no steps to revise or modify or change or reconsider those regulations relating to weighing practices, following the 1958 amendment of the Act. Upon receipt of the complaint, Fairbank petitioned the Secretary of Agriculture to revise and modify said regulations to make the regulations suitable for application to country operations. (See Appendix pp. 11a-14a.) This petition was denied. (See Appendix pp. 14a-15a.) Fairbank in the administrative proceeding filed a motion for a declaratory order as to the validity of said sections of the regulations as applied to country transactions. (See Appendix pp. 18a-19a.) The motion was denied. To deny Fairbank the right to present evidence as to the validity of the above regulations is a complete abandonment of the standards established by the Administrative Procedure Act. Any party has a right to be heard as to the validity of any rule or regulation which affects his business activities in a regulated industry. It was the duty of the Hearing Examiner to hear relevant evidence as to the validity of said regulations and upon such evidence determine if the questioned regulations were valid or invalid as to country transactions. *Board of Trade of City of Chicago* v. *United States*, 246 U.S. 231 (1918). Due to the large volume of livestock transactions at points other than posted stockyards, the question of the validity of the regulations is of great public importance and warrants the granting of a writ of certiorari. *Denver Union Stock Y. Co.* v. *Producers L. M. Ass'n.*, 356 U.S. 282.

## CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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